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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

LOW PAY, INC., dba LPC Inc.,
lowpaycard.com, and mylpcard.com; LP
CAPITAL HOLDINGS, INC.; CENTURY
LUXURY, INC.; THE MARDAN
AFRASIABI LIVING TRUST; MARDAN M.
AFRASIABI aka DAN AFRASIABI; and
RAMIN RAHIMI,

Defendants.

Case No. **CV '09 1265 BR**

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

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**COMPLAINT FOR PERMANENT
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Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101 - 6108, to obtain preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b), 6102(c), and 6105(b).

3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, which prohibits unfair and deceptive practices in or affecting commerce. The FTC also enforces the Telemarketing Act, 15 U.S.C. §§ 6101- 6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR, and to secure such equitable relief as

may be appropriate in each case, including restitution and disgorgement. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), 57b, 6102(c), and 6105(b).

DEFENDANTS

6. Defendant Low Pay, Inc. (“Low Pay”), also doing business as LPC, Inc., lowpaycard.com, and mylpcard.com, is an Oregon corporation with its principal place of business at 7665 S.W. Cirrus Ave., Beaverton, Oregon 97008. Low Pay also maintains a business office at 1005 S. Central Ave., Los Angeles, CA 90021. Low Pay transacts or has transacted business in this District.

7. Defendant LP Capital Holdings, Inc. (“LPCH”), was incorporated in Oregon on July 29, 2008, and has its principal place of business at 7665 S.W. Cirrus Ave., Beaverton, Oregon 97008. Sole ownership of Low Pay was transferred to LPCH in September 2008. LPCH transacts or has transacted business in this District.

8. Defendant Century Luxury, Inc. (“Century”), was incorporated on November 11, 2005, and has its principal place of business at 1005 S. Central Ave., Los Angeles, CA 90021. Century transacts or has transacted business in this District.

9. Defendant The Mardan Afrasiabi Living Trust (“Trust”), a revocable trust, is a 50% owner of LPCH. Defendant Mardan M. Afrasiabi is grantor, trustee, and a beneficiary of the Trust. The Trust transacts or has transacted business in this District. At all times material to this Complaint, acting alone or in concert with others, the Trust has formulated, directed, controlled, had authority to control, or participated in the acts and practices as set forth in this Complaint. Defendant Trust resides in this District and, in connection with the matters alleged herein, transacts or has transacted business in this District.

10. Defendant Mardan M. Afrasiabi, also known as Dan M. Afrasiabi, is the president

and treasurer of LPCH and Low Pay, and a 50% owner, a director and an officer of Century. Prior to September 2008, Mardan M. Afrasiabi directly owned 50% of Low Pay. At all times material to this Complaint, acting alone or in concert with others, directly or through LPCH and the Trust, he has formulated, directed, controlled, had authority to control, or participated in the acts and practices as set forth in this Complaint. Defendant Afrasiabi resides in this District and, in connection with the matters alleged herein, transacts or has transacted business in this District.

11. Defendant Ramin Rahimi is a 50% owner of LPCH and Century. He is director and secretary of LPCH and Low Pay, and director and president of Century. Prior to September 2008, Ramin Rahimi directly owned 50% of Low Pay. At all times material to this Complaint, acting alone or in concert with others, directly or through LPCH, he has formulated, directed, controlled, had authority to control, or participated in the acts and practices as set forth in this Complaint. Defendant Rahimi, in connection with the matters alleged herein, transacts or has transacted business in this District.

12. Defendants Low Pay, LPCH, and Century have operated as a common enterprise while engaging in the deceptive acts and practices alleged below. Defendants Low Pay, LPCH, and Century are interrelated companies that have common ownership, officers, addresses, and a common business purpose. Because these Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendants Mardan M. Afrasiabi, individually and through the Trust and Ramin Rahimi have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the corporate Defendants that constitute the common enterprise.

COMMERCE

13. At all times relevant to this Complaint, Defendants have maintained a substantial

course of trade or business in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS PRACTICES

14. From late 2006 to the present, Defendants have marketed and sold the “Pre-Approved” “Platinum-level LPC Card” (“LPC credit card” or “LPC card”) via direct mail. The LPC credit card can only be used when purchasing items from the Low Pay merchandise catalog. The LPC mailer urges recipients to call Defendants’ toll-free number to “activate” the LPC credit card.

15. Defendants target consumers who have no credit or a poor credit rating.

16. The LPC mailer proclaims that the LPC card provides “LOW MONTHLY PAYMENTS,” and a “GUARANTEED” \$7500 credit line. Defendants require payment of a non-refundable \$79 processing fee and a \$120 activation fee before they grant consumers access to the “guaranteed” LPC credit line.

17. The LPC mailer uses terms such as “Platinum,” “Pre-Approved,” “credit limit,” “pre-screened credit offer,” and “cash advance” that are commonly associated with a credit card. Defendants affix a plastic credit card to the LPC mailer that looks like a credit card; it has the consumer’s name, a 16-digit credit account number, and an expiration date embossed on it in raised characters. The back of the card appears to have a magnetized stripe and a box for the “authorized signature.” The credit card has a peel-off sticker advising consumers to “activate before use.”

18. The LPC mailer also proclaims that the LPC credit card provides consumers access to a cash advance benefit with phrases such as “NO FEE CASH-ADVANCE OPPORTUNITY,” or “GUARANTEED CASH ADVANCE BENEFIT, ” and states that consumers can “BUILD YOUR CREDIT WITH US.”

19. The net impression created for consumers by the LPC mailer is that the LPC credit card is like other credit cards, which provide access to a line of credit that is available to fully finance purchases made using the credit card. This impression is reinforced by the instruction to call and “activate” the card and by Defendants’ telephone sales agents when consumers call to do so. The LPC credit card, however, does not provide such a line of credit. Before consumers can access the LPC credit line, they must first pay 30% of the purchase price and shipping costs for any products ordered, which can be substantial. The purchase price listed in the Low Pay merchandise catalog is generally two to three times the retail value of the item. Thus, the LPC card does not provide access to a line of credit as that term is commonly understood.

20. The free, no-fee, low cost, or guaranteed cash advance offered in connection with the LPC credit card is nothing more than a payday loan, for which the consumer must apply, and which carries very high costs if not repaid before the consumer’s next pay date.

21. Defendants do not report any consumer payment history with the LPC credit card to any credit reporting agency. Thus, consumers cannot “build their credit” using the LPC credit card.

22. Disclosures about the LPC credit card terms and conditions, including the manner in which fees are paid, are not adequate to remedy the net impression created by the LPC mailer and activation process. The disclosures are presented out of context without explanation or clarification in the LPC mailer, mostly buried in fine print on the back of the mailer or in a separate disclosure document, and worded in a confusing and contradictory manner. Moreover, Defendants know that when consumers call to “activate” the LPC card they often have not scrutinized or understood the fine print in the LPC mailer and, therefore, are unaware of many of the terms and conditions of the LPC credit card offer. Defendants have designed the LPC credit card telephone activation process to give consumers as little information as possible and to

withhold the limited disclosures that are made until the verification process, which occurs after the consumer has provided payment information. The demand drafts submitted by Defendants for fee payments have a 64% return rate, mostly for insufficient funds. Complaint calls by consumers to Defendants' customer service representatives are numerous. Sales of merchandise are negligible. All these factors demonstrate that most consumers still do not understand the material terms and conditions of the LPC offer after completing the LPC card activation process.

23. Defendants do not disclose adequately that:

- a. Defendants will deduct the advance fees they charge from consumers' bank accounts;
- b. Defendants will charge a non-refundable \$198 annual fee to consumers' LPC accounts, and subsequently will deduct the annual fee from consumers' bank accounts in two monthly payments of \$99; and
- c. Defendants will deduct from consumers' bank accounts, upon purchase of any item from the LPC merchandise catalog using the LPC credit card, a down payment of 30% of the purchase price and shipping costs.

24. Defendants represent that they offer a 30-day money back guarantee of the \$120 activation fee to consumers who return the LPC credit card and merchandise catalog. This representation is important to consumers, many of whom have reservations about accepting the LPC offer because they cannot view the Low Pay merchandise catalog to see what is offered and at what price, and cannot receive details about the cash advance, until after the advance fees have been paid. The 30-day money back guarantee is repeated often during the sales call to reassure consumers that they have little to lose by completing the LPC activation process. This is not true. For a variety of reasons, Defendants give few refunds. In some instances consumers do not receive the LPC card and merchandise catalog in time to request a refund during the 30-day

refund period. In other instances Defendants use hardball tactics to keep consumers from exercising their right to a refund by, for example, threatening to report the consumer for non-payment to a check monitoring company like Telechek. Of 60,000 consumers who have cancelled the LPC credit card, only about 1400 have received refunds of the \$120 activation fee.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

25. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

26. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. 15 U.S.C. § 45(a).

COUNT ONE

27. Through the means discussed in Paragraphs 14-24, Defendants have represented, directly or indirectly, expressly or by implication, that the LPC credit card can be used to fully finance purchases.

28. In truth and in fact, the LPC credit card cannot be used to fully finance purchases, because consumers are required to pay 30% of the purchase price and shipping costs of products ordered before they can access the LPC credit line.

29. Therefore, Defendants’ representation as set forth in Paragraph 27 of this Complaint is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

30. Through the means discussed in Paragraphs 14-24, Defendants have represented, directly or indirectly, expressly or by implication, that the LPC credit card provides access to a no fee, low cost, or guaranteed cash advance benefit.

31. In truth and in fact, the LPC credit card does not provide access to a no fee, low

cost, or guaranteed cash advance benefit, but rather provides the opportunity to apply for a payday loan.

32. Therefore, Defendants' representation as set forth in Paragraph 30 of this Complaint is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT THREE

33. Through the means discussed in Paragraphs 14-24, Defendants have represented, directly or indirectly, expressly or by implication, that consumers will improve their credit ratings by using the LPC credit card.

34. In truth and in fact, consumers do not improve their credit ratings by using the LPC credit card.

35. Therefore, Defendants' representation as set forth in Paragraph 33 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT FOUR

36. Through the means discussed in Paragraphs 14-24, Defendants have represented, directly or indirectly, expressly or by implication, that consumers will receive a Platinum-level LPC credit card with a guaranteed unsecured credit line and a cash advance benefit.

37. In numerous instances, Defendants have failed to disclose adequately to consumers material information, including but not limited to, that:

- a. Defendants will deduct the advance fees they charge from consumers' bank accounts;
- b. Defendants will charge a non-refundable \$198 annual fee to consumers' LPC accounts, and subsequently will deduct the annual fee from

consumers' bank accounts in two monthly payments of \$99; and

- c. Defendants will deduct from consumers' bank accounts, upon purchase of any item from the LPC merchandise catalog using the LPC credit card, a down payment of 30% of the purchase price and shipping costs.

38. Defendants' failure to disclose adequately the material information described in Paragraph 37, in light of the representation described in Paragraph 36, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT FIVE

39. Through the means discussed in Paragraphs 14-24, Defendants have represented, directly or indirectly, expressly or by implication, that consumers can cancel and obtain a refund of the \$120 activation fee by returning the LPC credit card and merchandise catalog within the 30-day refund period.

40. In truth and in fact, in numerous instances, consumers cannot cancel and obtain a refund of the activation fee by returning the LPC credit card and merchandise catalog within the 30-day refund period.

41. Therefore, Defendants' representation as set forth in Paragraph 39 of this Complaint is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TELEMARKETING SALES RULE

42. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101 - 6108, in 1994. The FTC adopted the original Telemarketing Sales Rule in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.

43. Defendants are “seller[s]” or “telemarketer[s]” engaged in “telemarketing,” as defined by the TSR, 16 C.F.R. § 310.2(z), (bb), and (cc).

44. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services, any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer.

16 C.F.R. § 310.3(a)(2)(iii).

45. The TSR prohibits sellers and telemarketers from failing to disclose truthfully in a clear and conspicuous manner, before a customer pays for goods or services, among other things:

- a. The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer. 16 C.F.R. § 310.3(a)(1)(i);
- b. All material restrictions, limitations, or conditions, to purchase, receive, or use, the goods or services that are the subject of the sales offer. 16 C.F.R. § 310.3(a)(1)(ii); and
- c. If the seller or telemarketer makes a representation about a refund or cancellation policy, a statement of all material terms and conditions of such policy. 16 C.F.R. § 310.3(a)(1)(iii).

46. It is an abusive telemarketing act or practice and a violation of the TSR for any seller or telemarketer to request or receive payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person. 16 C.F.R. § 310.4(a)(4).

COUNT SIX

47. In numerous instances, in connection with telemarketing the LPC credit card, Defendants have misrepresented, directly or by implication, material aspects of the performance, efficacy, nature, or central characteristics, of the LPC credit card, including but not limited to:

- a. That the LPC credit card can be used to fully finance purchases;
- b. That the LPC credit card provides consumers access to a no fee, low cost, or guaranteed cash advance benefit; and
- c. That consumers will improve their credit ratings by using the LPC credit card.

48. Defendants' acts or practices, as described in Paragraph 47 above, are deceptive telemarketing acts or practices that violate Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT SEVEN

49. In numerous instances, in connection with telemarketing the LPC credit card, Defendants have misrepresented, directly or by implication, material aspects of the nature or terms of Defendants' refund, cancellation, exchange, or repurchase policies.

50. Defendants' acts or practices, as described in Paragraph 49 above, are deceptive telemarketing acts or practices that violate Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R. § 310.3(a)(2)(iv).

COUNT EIGHT

51. In numerous instances, in connection with telemarketing the LPC credit card, Defendants have failed to disclose truthfully, in a clear and conspicuous manner, before a consumer pays for goods or services offered, material information about the total costs to

purchase, receive, or use the LPC credit card, and material restrictions, limitations, or conditions to purchase, receive, or use the LPC credit card, including but not limited to:

- a. Defendants will deduct the advance fees they charge from consumers' bank accounts;
- b. Defendants will charge a non-refundable \$198 annual fee to consumers' LPC accounts, and subsequently will deduct the annual fee from consumers' bank accounts in two monthly payments of \$99; and
- c. Defendants will deduct from consumers' bank accounts, upon purchase of any item from the LPC merchandise catalog using the LPC credit card, a down payment of 30% of the purchase price and shipping costs.

52. Defendants' acts or practices, as described in Paragraph 51 above, are deceptive telemarketing acts or practices that violate 310.3(a)(1)(i) and 310.3(a)(1)(ii) of the TSR, 16 C.F.R. §§ 310.3(a)(1)(i) and 310.3(a)(1)(ii).

COUNT NINE

53. In numerous instances, in connection with telemarketing the LPC credit card, Defendants have made a representation about a cancellation or refund policy and failed to disclose truthfully, in a clear and conspicuous manner, before a consumer pays for the goods or services offered, all the material terms and conditions of such policy.

54. Defendants' act or practice, as described in Paragraph 53 above, is a deceptive telemarketing act or practice that violates Section 310.3(a)(1)(iii) of the TSR, 16 C.F.R. § 310.3(a)(1)(iii).

COUNT TEN

55. In numerous instances, in connection with telemarketing the LPC credit card, Defendants have requested or received payment of a fee or consideration in advance of consumers obtaining an extension of credit when Defendants have guaranteed or represented a high likelihood of success in obtaining or arranging an extension of credit for such consumers.

56. Defendants' act or practice, as described in Paragraph 55 above, is an abusive telemarketing act or practice that violates Section 310.4(a)(4) of the TSR, 16 C.F.R. § 310.4(a)(4).

CONSUMER INJURY

57. Consumers have suffered and will continue to suffer injury as a result of Defendants' violations of the FTC Act and TSR. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

58. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

59. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the TSR, including the rescission or reformation of contracts, and the refund of money.

PRAYER FOR RELIEF

Wherefore, Plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:

- A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including, but not limited to, a preliminary injunction;
- B. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;
- C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and disgorgement of ill-gotten monies;
- D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

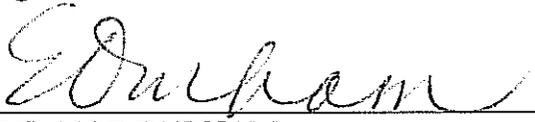
Dated: October 28, 2009

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